

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7574 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
 2. To be referred to the Reporter or not? No.
 3. Whether Their Lordships wish to see the fair copy of the judgement? No.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? No.

JAKIRHUSEN M SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MRS AMI YAGNIK, A.P.P.for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/02/97

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu Jakirhusen Manjurhusen Shaikh has challenged the detention order dated 12-8-1996 rendered by the respondent no.1 u/s 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short 'the PASA Act').

2. The grounds on which the order of detention is passed appear at annexure 'C'. They inter-alia indicate

two cases being CR Nos. 93/96 and 139/96 registered in Madhavpura Police Station for the offences u/s 379-114 of the I.P. Code and u/s 397-395-412 r/w Sec.120 (B) of the I.P. Code. It has been recited that the petitioner with aid of his associates entered into criminal conspiracy for committing robbery and assaulting the security persons guarding the property of the closed mills and after tying them down and after threatening them with deadly weapons committed theft of mill machinery, cloth goods and other movable articles. It has been further recited that at the time when the petitioner was in judicial custody the impugned order of detention was passed in respect of CR. No.139/96 and as the petitioner was released on bail in so far as CR. No.93/96 was concerned, there was likelihood of the petitioner being enlarged on bail in CR. No.139/96 also. Under such circumstances, it has been recited that the petitioner has been carrying on unlawful and anti-social activities of committing robbery and thefts in the closed mills and as the same generated atmosphere of fear amongst the people residing in the locality it became necessary to preventively detain him under the aforesaid provision of the PASA Act.

3. Over and above aforesaid cases, the statements of four witnesses have been recorded. They speak about the incidents dated 3-7-1996 and 20-7-1996, indicating beating of concerned witnesses in public and creating atmosphere of fear amongst the people collected at the time of the incidents. The petitioner has accordingly been branded as dangerous person within the meaning of Sec. 2(C) of the PASA Act. It has therefore been recited that the petitioner's activities would tend to affect the public order; that is how the impugned order of detention has been passed against the petitioner.

4. The order of detention has been challenged on number of grounds inter-alia on the ground that there is now no necessity to continue petitioner's detention in view of the fact that the petitioner's bail application in respect of CR No.139/96 has been rejected by the Sessions Court on 12-8-96 on which date itself impugned order of detention was passed. Even in pursuance of the order passed by this Court on 13-1-1997 the representation made by the petitioner came to be decided after delay of 18 to 19 days i.e. on 5-2-1997. Reliance in this respect has been placed on the decision of the Apex Court in case of Harish Pahwa Vs. State of U.P., reported in AIR 1981 SUPREME COURT 1126 and Kundanbhai Dalabhai Shaikh V. District Magistrate, reported in 1996 (3) SCC 194. Explanation for delay which has been

rendered by the learned A.P.P. for the respondents upon the instructions received by her is that there was work load on the part of the concerned authority. However, the Apex Court in Kundanbhai's case (supra) has clearly stated that unexplained delay and unsatisfactory explanation for disposal of representation would vitiate the order of detention. In spite of the fact that the Court directed to consider the representation made on the strength of the order of this Court the representation was not decided well in time. That apart, this Court by the order dated 13-1-1997 clearly indicated that the learned Additional City Sessions Judge by his order dated 12-8-1996 rejected the petitioner's bail application and it was co-incidence that the order of rejection of bail was passed on the same day when the order of detention was passed. As the ground of nonapplication of mind on that score was pressed into service the petitioner was granted one more opportunity to make a representation to the State Government for deciding whether any further detention of the petitioner was necessary in the facts and circumstances of the case. From the file of the case, the learned A.P.P. has submitted that the ground of rejection of bail was not acceptable to the State Government for the reason that fresh bail application could be moved by the petitioner. However, there are no changed circumstances suggested for saying that fresh bail application could be moved by the petitioner. In my opinion, there is clear nonapplication of mind on the part of the Government on the question whether it was necessary to continue preventive detention of the petitioner when he was already in judicial custody on account of rejection of his bail application. There is also delay in deciding petitioner's representation as aforesaid.

5. In the facts and circumstances, therefore, the petitioner's continued detention cannot be upheld and the same is required to put an end to. The petition is allowed by declaring continued detention of the petitioner to be illegal and the same is hereby snapped. The petitioner Jakirhusen Manjurhusen Shaikh is, therefore, directed to be released forthwith from preventive detention under the impugned order of detention by observing that he is continued to be in judicial custody in respect of CR No.139/96. Rule made absolute.